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April 18, 2005

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Secretary Elaine Chao
U.S. Department of Labor
200 Constitution Ave, N.W.
Washington, DC 20210

Dear Secretary Chao:

I am writing to express my concern regarding the Department's apparent consideration, prompted by a letter from two Members of Congress, of an investigation into the AFL-CIO for its public outreach effort opposing the President's plan for Social Security. This threatened investigation comes despite the fact that there is neither a legitimate assertion of unlawful conduct, nor any evidence of a violation of law.

There is a good reason for labor union leaders, like other Americans, to be concerned with the effect of the President's Social Security privatization plan on the financial security and pensions of union members. As citizens, they have a First Amendment right to speak out. As labor leaders, they have a duty to speak out particularly to protect and promote their members' interests. An investigation would amount to both a direct assault on the First Amendment and an unwarranted intrusion into union activities.

A decision by the Department of Labor to trigger the force and power of its investigatory authority based solely on a letter filled with inaccurate factual and legal representations is a dangerous and abusive use of government resources. Such an action would have no purpose other than to intimidate the voice of millions of working families who choose to express themselves on the most significant retirement security issue of our generation. I view such actions as a serious abuse of authority and a threat to open political debate.

The letter sent to you by two Members of Congress alleges that union-sponsored protests at financial firms which support Social Security privatization violate the National Labor Relations Act's prohibition on secondary boycotts. Aside from the fact that the Department of Labor does not investigate allegations of unfair labor practices such as secondary boycotts, the legitimate actions taken by labor groups in this case do not even marginally fit the definition of such a practice.

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The request also insinuates that unions have misused members' dues in violation of the National Labor Relations Act, but provides no legal justification or factual basis for such a charge. As you know, the National Labor Relations Act does not restrict the expenditure of members' dues on matters of public debate.

The letter falsely asserts that the Labor Management Reporting and Disclosure Act limits how unions may expend resources when engaging in public policy debate. The LMRDA requires that union funds be spent and invested solely for the benefit of members, taking into account the functions of a labor organization and in accordance with its constitution and bylaws. Congress and the courts recognize that unions can and should engage in public policy debates that affect their members on or off the job.

The letter's allegation that unions have violated ERISA by opposing Social Security privatization and by discouraging investments in firms which support privatization also lacks any legal or factual basis. Unions are not pension plans. Union officials are not pension officials. To the extent that a person acts in his or her capacity as a union officer or representative, ERISA is not applicable. ERISA applies to the fiduciaries of a plan acting in that capacity. Even if ERISA were to apply, pension plan fiduciaries have a duty to act prudently and solely for the benefit of plan participants and beneficiaries. Pension plans do not exist in a vacuum. With a public policy debate raging over the President's Social Security privatization plan, pension plan fiduciaries have a right and arguably a duty to act upon that issue for the benefit of participants and beneficiaries.

The Social Security privatization plan advocated by President Bush and congressional supporters will negatively impact pension plans in a number of serious ways. A wide range of experts have sounded warnings:

- * The Congressional Research Service has warned that "[e]mployers could seek to offset cost increases that arise from administering individual accounts by reducing or restructuring the benefits they currently offer to their employees."
- * The General Accounting Office likewise has warned: "Employers will respond to reforms that affect compensation costs or the incentives for sponsoring a plan. For example, a reduction in Social Security benefits will raise compensation costs for employers with plans that directly offset the earned pension benefit with a portion of the worker's Social Security benefit. In response, employers might redesign the plan feature, absorb the increased cost, or shift the cost to customers through price increases or to employees through employment or compensation reductions . . ."

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* The ERISA Industry Committee, an organization representing employers with pension plans, has acknowledged that the increased cost of administering individual accounts “could cause a shrinkage of pension sponsorship.”

In addition to the above concerns raised by government and industry, it has been reported that the massive long-term federal deficit which will result from privatization will increase long-term interest rates and decrease bond portfolios, in which 40% or more of all pension fund assets are invested. These high interest rates in turn will deplete the real value of plan participants’ accrued benefits. Under such circumstances, a plan fiduciary has the right, if not the duty, to consider whether pension money should be allowed to fund efforts to promote Social Security privatization that will harm the plan itself.

ERISA also allows plan fiduciaries to take into account collateral benefits and harms to participants, beneficiaries, and their communities when making investment decisions. In the case of the President’s Social Security privatization proposal, it is reasonable that pension plan fiduciaries take into account its severe impact on Social Security and on retirement security generally when deciding whether to give business to a service provider which is actively supporting this proposal – especially when they might obtain the same services at the same prices from another provider who is not funding such a proposal.

Given the warnings, echoed by both government and industry, that Social Security privatization could result in the reduction of benefits, the restructuring of plans, or even the elimination of plans, it is entirely appropriate that those concerned with pension funds are actively engaged in the Social Security privatization debate.

Any effort to use Department of Labor’s investigative arm to bully political opponents and chill their First Amendment Rights would set a shameful precedent, and would constitute an abuse of governmental authority. America’s labor unions have a Constitutional right to speak out on issues affecting the economic security of their members, free of governmental intimidation and threats.

Sincerely,

A large, stylized handwritten signature in black ink that reads "George Miller". The signature is written over the printed name "GEORGE MILLER".

GEORGE MILLER
Senior Democrat

Committee on Education and the Workforce